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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/505,240

02/22/2005

Steven Streatfield Gill

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EXAMINER

DESANTO, MATTHEW F

ART UNIT

PAPER NUMBER

3763

MAIL DATE

DELIVERY MODE

05/13/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/505,240	Applicant(s) GILL, STEVEN STREATFIELD	
	Examiner MATTHEW F. DESANTO	Art Unit 3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
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| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/22/09</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 24, 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claims 24 and 25 are unclear because they recite dependent claims that are fail to recite a neurosurgical catheter, for example claim 22 is drawn to a guide and not a catheter as in claim 1. Also claim 23 is drawn to a method, so the dependency of claim 24 is unclear when trying to include a structural limitation from a method step.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-5, and 24-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Eggers et al. (USPN 6,045,532).

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3. Eggers et al. a neurosurgical catheter with an external diameter not more than 0.5mm (Column 24, lines 13-67) and that has a stop at the proximal end.
4. Claims 1-6, 17, 22-28 are rejected under 35 U.S.C. 102(e) as being anticipated Pianca et al. (USPN 7,033,326)
5. Pianca et al. discloses a neurosurgical catheter (135) with an external diameter not more than 0.5mm, that is inserted and connected to a guide tube as well as method of using the device (Figure 2C, 2F, 5 and respective columns).
6. Claims 1, and 17-22, are rejected under 35 U.S.C. 102(e) as being anticipated Gill (USPN 6,609,020)
7. Gill discloses a neurosurgical catheter with an external diameter less than 1 millimeter and a guide tube with a dome, a channel, and screws (Column 7, lines 35-55).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gill (USPN 6,609,202) as applied to claims above, and further in view of Eggers et al. and Brimhall et al. (USPN 6,719,727).
10. Gill discloses the claimed invention except for the size of the catheter or insertion device to have an outer diameter not more than 0.5 mm. Gill also fails to disclose a hub

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that connects two tubes together as well as the hub having flanges that can be attached to the skull.

11. Eggers et al. discloses the size of the neurosurgical catheter being around .5mm.

12. Brimhall et al. discloses a winged catheter hub that can be attached to the skull because of the stiffening members that are located within the hub and have countersunk hole (Figure 2, 4) as well as the hub being used as a linking passage and connects two tubes with different diameters.

13. At the time of the invention it would have been obvious for one of ordinary skill in the art to combine the device of Gill with the teachings of Eggers et al. and Brimhall et al. Gill discloses that an insertion device can be put into the guide tube that is less than 1 millimeter in diameter but never explicitly discloses the exact dimensions, therefore it would have been obvious to use the teachings of Eggers et al. to modify the insertion device of Gill to have a catheter with a outer diameter not greater then 0.5 mm, since Eggers et al. shows the level of skill and catheters that can be used with the guide tube of Gill. This modification would only take routine skill in the art as a change in size and shape is well known in the medical catheter art.

14. It would also have been obvious to combine the device and teachings of Gill with the stiffening hub of Brimhall et al. because Brimhall et al. discloses a way to reduce the chance of tearing wings of the catheter hub. Therefore it would have been obvious to add the catheter hub of Brimhall to one of the insertion devices or catheters as described by Gill and that are well known and commonly used in the neurosurgical art.

Response to Arguments

15. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

16. The rejections based on Parmer (USPN 6,902,569) and Nita (USPN 5,951,539) have been withdrawn.

Conclusion

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW F. DESANTO whose telephone number is (571)272-4957. The examiner can normally be reached on Monday-Friday 9:30-6:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick LUCCHESI can be reached on (571) 272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Matthew DeSanto
/Matthew F DeSanto/
Primary Examiner, Art Unit 3763